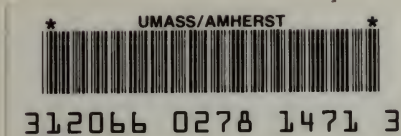


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SENATE No. 1608

The Commonwealth of Massachusetts

FINAL REPORT

of the

BERKSHIRE COUNTY CHARTER COMMISSION

SUBMITTING PROPOSED LEGISLATION

Relative to

A CHARTER FOR BERKSHIRE COUNTY.

**(under Sections 12 and 13 of
Chapter 34A of the General Laws)**

April 7, 1988.
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The Commonwealth of Massachusetts

THE FINAL REPORT

of the

BERKSHIRE COUNTY CHARTER COMMISSION

containing

THE CHARTER FOR BERKSHIRE COUNTY

The Berkshire County Charter Commission

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James L. Rowley, *Vice-Chairman*

James M. Boyle, *Treasurer*

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The Commonwealth of Massachusetts

FINDINGS AND RECOMMENDATIONS

After about eighteen months of intensive work, over two dozen meetings, six public hearings, as well as the careful consideration of many research and other reports prepared by the Consultant, Professor David A. Booth of the University of Massachusetts, who has provided consultant assistance at the federal and state levels as well as to over thirty municipalities in Massachusetts, the Berkshire County Charter Commission is honored to present this Final Report to the voters of Berkshire County.

Findings

1. County government should not be abolished, but it should be strengthened and modernized.
2. The best of existing county government should be preserved.
3. The present county government lacks a visible legislative branch that can discharge traditional legislative functions.
4. The present system of having an advisory board and a board of three county commissioners is confusing.
5. The present system lacks full-time professional administration and management.

Recommendations

The Charter Commission recommends:

1. The retention of the present elected officers — an elected sheriff, an elected treasurer, and three elected registers of deeds.
2. The establishment of a nine person legislative body — six to be elected for overlapping four-year terms from three legislative districts, and three to be elected at-large, also for overlapping four-year terms.
3. The introduction of professional full-time administration in county government. The Charter provides for the appointment of a county administrator, who will have general responsibility for the day-to-day administration of the county's government.
4. That the county should facilitate the modernization of several functions, such as:
 - (a) the negotiation of contracts with local governments;
 - (b) the negotiation of contracts with the private sector;
 - (c) the establishment of regional councils consisting of two or more municipalities.

5. The Charter Commission also recommends:

(a) the establishment of a county personnel system, relating to all county employees;

(b) the grouping of various functions into several divisions and/or departments;

(c) the establishment of a closer relationship with the Berkshire County Regional Planning Commission.

Conclusion

The Commission did not seek to revolutionize county government. It has preferred to move slowly, and to establish a structure that can provide: (a) some county-wide services; (b) some services to individual communities, for example small towns, which those communities find hard to provide for themselves; and (c) the possible grouping of several towns, or cities and towns, into regional councils, which may choose to join together to accomplish certain purposes.

Final Recommendation

The Charter Commission recommends the adoption of this charter, and asks for a "Yes" vote on the charter question at the November 1988 elections.

The Berkshire County Charter Commission
Alma Arlos, *Chairman*

PREAMBLE

We the people of Berkshire County, Massachusetts, a body corporate and politic, under the Constitution and General Laws of the Commonwealth of Massachusetts, do adopt this Charter as our instrument of county government.

CHAPTER ONE

GENERAL PROVISIONS

Section 1. *Form of Government*

1-1-1. The form of government established by this charter shall be known as the “county administrator” plan. It shall be governed by an elected county council and an appointed county administrator, and by such other officers and employees as may be established by this charter or by ordinance adopted pursuant to General Law, Special Act, or this charter.

1-1-2. The Charter shall be known as “The Berkshire County Charter.”

Section 2. *Construction of County Charter*

1-2-1. The grant of powers under this charter is intended to be as broad as possible, consistent with the Constitution of the Commonwealth, and the General Laws relating to local government.

1-2-2. The grant of powers shall be liberally construed in regard to the county’s right to reorganize its own form of government, to reorganize its structure, and to alter, create or eliminate its agencies, subject to the general mandate of performing services whether they be performed by the agency previously established or by a new agency or other department of county government.

1-2-3. Based on the need to develop effective services to meet problems which cross city or town boundaries and which cannot be met effectively on an individual municipal basis, this chapter shall be construed as intending to give Berkshire County the power to establish regional councils to perform such services and provide such programs as the Constitution of the Commonwealth of Massachusetts and the General Laws permit.

Section 3. *Intergovernmental Relations*

1-3-1. The county may exercise any of its powers and perform any of its functions, and may participate in the financing thereof, jointly

or in cooperation, by contract or other agreement, with any other state, county, or with any civil division or agency of the Commonwealth or of the United States Government.

Section 4. Powers of the County

1-4-1. The adoption of this charter by the voters of Berkshire County shall serve to empower the county to:

(a) Exercise all powers of county government in such manner as the county council may determine;

(b) Organize and regulate its internal affairs; create, alter, or eliminate offices, positions and employments and define functions, powers and duties thereof; establish qualifications for persons holding appointed offices, positions and employments; and provide for the manner of their appointment and removal and for their term, tenure and compensation.

(c) Adopt, amend, enforce, and repeal codes, ordinances, and resolutions notwithstanding the effect of any referendum conducted prior to the county's adoption of its charter.

(d) Construct, acquire, operate and maintain public improvements, projects or other enterprises for any public purposes subject to such referendum as may otherwise be required by general law.

(e) Exercise powers of eminent domain, borrowing and taxation as provided by general law and this charter.

(f) Sue and be sued; have a corporate seal; contract and be contracted with; buy, sell, lease, hold and dispose of real and personal property; appropriate and expend monies for county purposes.

Section 5. Contracts with Local Government

1-5-1. The county, its departments and officers may contract with other states, counties or other government entities to provide services to the county or to one or more municipalities within the county.

1-5-2. All such contracts shall be prepared by the county administrator and be approved by the county council.

Section 6. Contracts with the Private Sector

1-6-1. The county, its departments and officers may contract with any organization in the private sector to provide services to the county or to one or more municipalities within the county.

1-6-2. All such contracts shall be prepared by the county administrator and be approved by the county council.

CHAPTER TWO

THE COUNTY COUNCIL

Section 1. *Legislative Body: Name and Composition*

2-1-1. The legislative body shall consist of a county council composed of nine members.

2-1-2. Three members shall be nominated and elected at-large for overlapping four-year terms, by the qualified voters of the entire county. Not more than one of the at-large county councillors shall be chosen from the same city or town. If two persons residing in the same city or town shall appear to have been chosen councillor at-large, only the person receiving the largest number of votes shall be declared elected.

2-1-3. Six members shall be nominated and elected by the qualified voters of each of three voting districts, as provided by this charter. District county councillors shall be elected for overlapping four-year terms.

2-1-4. Each county councillor shall have one vote.

Section 2. *Eligibility*

2-2-1. All qualified voters of the county, except compensated employees and compensated officers thereof, shall be eligible to hold the office of county councillor.

Section 3. *Compensation*

2-3-1. County councillors shall receive such salary as may be established by ordinance, provided that any increase in salary shall only take effect after the next regular election.

Section 4. *Nominations*

2-4-1. The nomination of candidates for the county council shall be as now provided by law for county commissioners, except that the number of signatures required for nomination as a councillor at large shall be five hundred voters, and the number of signatures required for nomination as a district county councillor shall be one hundred and fifty voters.

Section 5. *Election*

2-5-1. The regular election of county councillors shall be held on the date provided by law for the holding of state elections.

Section 6. *Vacancies*

2-6-1. Vacancies arising in the office of councillor shall be filled

by a majority vote of the remaining members of the county council. In the case of a vacancy of a district councillor, the person appointed shall be a registered voter of the same district.

2-6-2. Any person appointed to fill a vacancy on the county council shall serve until the next state election. At said election, an election shall be held to fill the unexpired portion of the term.

Section 7. *Meetings*

2-7-1. The county council shall meet in regular session at least once in each month. The council shall provide by ordinance for the manner, time and place of holding all regular meetings and for the procedure of calling special meetings.

Section 8. *Presiding Officer*

2-8-1. At its first meeting in January after a regular election, the council shall select one of its members to serve as chairperson and one to serve as vice-chairperson, each for a two-year term. The chairperson shall preside over council meetings during his tenure, and in his absence the vice-chairperson shall preside.

2-8-2. The chairperson shall not be eligible to serve more than two consecutive two-year terms.

Section 9. *Clerk of the Council*

2-9-1. The county council may appoint a clerk of the council who shall serve at its pleasure.

2-9-2. The clerk shall keep the records and the official journal of the council and perform such other duties as the council may, by ordinance, establish.

Section 10. *Policy Leadership*

2-10-1. The council shall serve as the chief goal-setting and policy-making agency of the county. The council shall cause the policies of the county to be regularly published, and copies shall be made available to those requesting them.

2-10-2. In addition to the power of adopting ordinances for the county, the council shall have the power to enact rules and regulations establishing county policies, not otherwise governed by general law, or charter, provided, however, that if an appropriation shall be necessary to implement such action, the vote of the council shall be effective only when such appropriation has been authorized.

Section 11. *Administration*

2-11-1. The council shall delegate the responsibility for the administration of the county's business to the county administrator.

As such, the board shall not normally administer the day-to-day affairs of the county, but shall instead regularly direct the county administrator to carry out county administrative duties.

Section 12. *Powers and Duties*

2-12-1. The county council shall have and exercise any and all legislative and investigative functions heretofore assigned by general law and special act to county commissioners, and shall have and exercise any and all powers as are now assigned by general law to county advisory boards.

2-12-2. The council shall:

(a) appoint, suspend or remove the county administrator and at least once each year review and appraise the administrator's performance.

(b) appoint, or remove for cause, members of county boards and commissions.

(c) approve the annual operating and capital improvement budgets, prior to the end of the fiscal year.

(d) provide for the number, powers and duties of all appointed county officers and employees.

(e) act upon all tax and revenue measures. Bond issues shall require at least seven affirmative votes in order to be adopted.

(f) advise and consent to all appointments made by the county administrator for which confirmation is required by this charter.

(g) act upon all contracts presented by the county administrator.

(h) pass whatever ordinances and resolutions it deems necessary and proper for the good governance of the county, in accordance with this chapter.

(i) establish by ordinance the compensation of all county officials and employees.

(j) provide for publication of the powers, duties, procedures, and rules of operation of all county offices and departments and for public access to such publications.

(k) take such measures as may be necessary to implement this charter.

2-12-3. The council may place advisory questions or proposed charter amendments on the November state ballot, provided that any such question or charter amendment shall have been previously submitted to the Secretary of State of the Commonwealth prior to

the first Wednesday in the month of August preceding the November election at which the question is to be placed on the ballot.

Section 13. *Apportionment*

2-13-1. Unless otherwise required by law, the county council shall prepare a reapportionment plan within 12 months after the release of the final figures of each state or federal census.

2-13-2. The districts shall be made up of contiguous, compact territory, and as nearly equal in population as practicable. The district lines shall be drawn without regard to partisan political advantage.

2-13-3. Any new reapportionment plan shall be submitted to the Secretary of State of the Commonwealth prior to the fifteenth of February preceding the November election at which the proposed apportionment plan is intended to be placed into effect.

Section 14. *Establishment of Regional Councils*

2-14-1. The county council may, by administrative code, adopt a procedure providing for the establishment of regional councils to promote cooperation between two or more municipalities within the county.

2-14-2. Delegates to regional councils shall be a person designated by the mayor, in the case of a city, or by the board of selectmen, in the case of a town. Such delegates shall serve at the pleasure of the appointive authority.

2-14-3. In establishing regional council boundaries and determining those functions to be undertaken by such councils, the county council shall take into consideration the following criteria:

(a) the extent to which the proposed area constitutes a region with common problems and concerns and a capacity for local initiative, leadership, and decision making;

(b) the availability of county resources which may be shared with the regional council;

(c) population density, distribution, and growth within a regional council area to ensure that its boundaries reflect the most effective territory for effective collaborative action.

Section 15. *Prohibitions*

2-15-1. No member of the county council during the term of office or for one year thereafter shall be eligible for appointment to any county office, position or employment carrying compensation except for reimbursement of authorized expenses.

2-15-2. Except for the purposes of investigation authorized by this charter, the council or its members shall deal with county officers and employees who are subject to the direction and supervision of the county manager solely through the county manager and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

CHAPTER THREE

THE COUNTY ADMINISTRATOR

Section 1. *Appointment*

3-1-1. The county council (hereinafter the council), by at least a two-thirds majority vote, shall appoint a county administrator for an indefinite term to serve at its pleasure.

3-1-2. In selecting a county administrator, the council shall search for candidates by placing an advertisement in the *International City Management Association Newsletter* or similar national professional publication, the *Beacon*, and in at least two newspapers having statewide or regional circulation.

3-1-3. No person who has held either elective or appointive county office during the preceding twelve months shall be eligible for the position of county administrator.

Section 2. *Qualifications*

3-2-1. The county administrator shall be appointed on the basis of educational, executive and administrative qualifications and experience. The educational qualifications shall consist of at least a bachelor's degree, preferably in public administration, granted by an accredited degree-granting college or university. The professional experience shall include at least five years of prior full time, compensated executive service in public or business administration. Alternatively, three years or more of professional experience and a master's degree in public or business administration shall qualify any applicant. Additionally, any applicant with a minimum of at least seven years of experience in the public sector shall also be fully qualified.

Section 3. *Residency*

3-3-1. At the time of his appointment the county administrator need not be a resident of the county, but after his appointment he

shall reside inside Berkshire County. The county council shall grant the administrator a reasonable amount of time to comply with this provision.

Section 4. *Duties*

3-4-1. The county administrator shall be the chief administrative office of the county and shall be responsible for administering and coordinating all employees, activities and departments placed by general law, this charter or county ordinance under the control of the council and of the county administrator.

3-4-2. He shall also seek to coordinate the activities of elected department heads which they share in common.

3-4-3. He shall devote his full working time to the duties of the office; shall not become a candidate for, or hold, any county or municipal elective office during his term of appointment; and shall not engage in any business activity during his term, except with the written consent of the council.

3-4-4. The county administrator shall:

(a) attend all meetings of the council, except when excused, and he shall have the right to speak but not to vote.

(b) assemble, prepare and present to the council an annual operating and other budgets of the county and be responsible for the development and annual revision of a county capital improvements budget and program, which shall also be annually presented to the council.

(c) be responsible for seeing that the budget is administered and expended as adopted by the council and in accordance with general law, this charter, and county ordinance.

(d) keep the council informed regarding all departmental operations, fiscal affairs, general problems, and administrative actions, and to this end shall submit quarterly and annual reports to the council.

(e) keep the council informed regarding the availability of state and federal funds and how such funds might relate to unmet short-range and long-range needs.

(f) solicit and prepare applications for grants, which shall be submitted to the council for approval.

(g) be responsible for the day-to-day administration of the county personnel code.

(h) be responsible for the purchasing of all county services and departments.

(i) make recommendations to the council regarding vacancies in committees and boards to be filled by the council.

(j) develop, keep, and annually update a full and complete inventory of all property of the county, both real and personal.

(k) negotiate collective bargaining contracts on behalf of the council, unless the council shall have designated another negotiator.

(l) perform such other duties as may be required by this charter, county ordinance, or vote of the council.

Section 5. *Responsibilities for Appointments*

3-5-1. Subject to the approval of the council, the county administrator shall have the power to appoint and, on the basis of merit and fitness along, and except as may otherwise be provided by general law, this charter, or administrative code may suspend or remove all appointed officers, division and department heads, except as otherwise specifically provided.

3-5-2. The county administrator shall also appoint, on the basis of merit and fitness alone, and, except as may otherwise be provided by general law, this charter, personnel code, or collective bargaining agreements, may suspend or remove: (a) all county employees and part-time employees, in close consultation with elected and appointed department heads to whom such employees are assigned; (b) all employees of appointed county multi-member bodies; and (c) all other full-time, part-time, or seasonal employees. All such appointments and removals shall be subject to disapproval by majority vote of the council taken within 30 days.

Section 6. *Responsibilities in Personnel Administration*

3-6-1. The county administrator shall administer and enforce collective bargaining contracts, and such personnel rules and regulations as may be provided by personnel code.

3-6-2. After consultation with the council the county administrator shall from time to time propose, and the council shall finally adopt, with or without amendment, a personnel code relating to all county positions, except those excluded by collective bargaining contracts.

3-6-3. The personnel code shall provide for:

(a) the classification of county positions, based on duties, responsibilities, and authority of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances.

(b) salary and pay plan for all positions.

(c) methods of determining the merit and fitness of candidates for appointment and promotion.

(d) policies and procedures regulating reduction in force and removal of employees.

(e) hours of work, attendance regulations, and provisions for sick, vacation, military and other leave.

(f) policies and procedures governing persons holding provisional appointments.

(g) policies and procedures governing relationships with employee organizations.

(h) policies regarding in-service training programs.

(i) grievance procedures, including procedures for the hearing of such grievances.

(j) such other practices and procedures as may be necessary for the administration of the county personnel system.

Section 7. *Responsibilities for Administrative Reorganization*

3-7-1. The county administrator may temporarily establish, reorganize, consolidate or abolish any department or position placed by this charter under his direction and supervision, except as otherwise provided by general law or this charter.

3-7-2. Any action taken under 3-7-1 shall be temporary until such time as it has been acted upon by vote of the county council, taken within sixty days.

3-7-3. The creation of any new full-time, compensated position shall require the approval of the county council and shall not become effective until the position has been funded by a vote of the council.

Section 8. *Responsibilities for Disbursement*

3-8-1. Warrants for the payment of county funds, prepared and signed by the county treasurer in accordance with general laws procedures, shall be submitted to the county administrator, and his approval thereof shall be sufficient authorization for payment by the treasurer, provided, however, that the council shall approve all warrants in the county administrator's absence or in the event of a vacancy in the office.

Section 9. *Evaluation*

3-9-1. The council shall annually evaluate the performance of the county administrator. The council shall adopt a written set of procedures and criteria which shall form the basis for the evaluation.

3-9-2. A copy of the evaluation shall be provided to the county administrator.

Section 10. *Removal*

3-10-1. The council may initiate the removal of the county administrator by adopting a resolution to that effect, stating the reasons therefor. The vote initiating removal shall be taken at a regular scheduled public meeting and in open session.

3-10-2. The adoption of said resolution shall serve to suspend the county administrator for a period of not more than forty-five days, during which the salary shall continue to be apaid. A copy of such resolution shall be delivered forthwith to the administrator in person, or sent by registered mail to his place of residence.

3-10-3. Within five days following the receipt of such resolution, the county administrator may file a written request for a public hearing. If such a hearing is requested, the council shall schedule it within two weeks, and it shall be held in a public place, unless the county administrator shall request that the hearing shall be held in executive session.

3-10-4. At least seven days prior to the public hearing, the council shall advertise the hearing in a newspaper of general circulation within the county, and shall cause identical notices citing the purpose, location, time, and date to be posted in all county buildings and in five other places of public access within the county.

3-10-5. The chairperson of the county council shall preside at any such hearing.

3-10-6. At any such hearing, the reasons for the removal shall first be read aloud. The county administrator shall then have the right to respond, either personally or through counsel. The council and the county administrator shall have the right to call witnesses and to subpoena any and all county records.

3-10-7. Final removal of any county administrator shall be effected by an affirmative vote of at least five members of the council at a public meeting of the body held within seven days of such public hearing, if requested. If no hearing has been requested, final removal may be effected by an affirmative vote of at least five members of the council at a meeting of the council held not earlier than fourteen days after the vote initiating the removal. The salary of the county administrator shall continue to be paid for a period of sixty days after the vote effecting removal from office.

3-10-8. The county administrator shall provide the council with at least ninety days notice of an intended resignation, provided, however, that the council may, at its discretion, shorten or waive such requirement.

Section 11. *Filling Vacancy*

3-11-1. When a vacancy arises in the office of the county administrator, the council shall advertise the vacancy as soon as possible. The council shall fill the vacancy as soon as possible but in any case, within six months.

Section 12. *Acting County Administrator*

3-12-1. The council shall designate, within ten days, a county officer or employee or other person to exercise the rights and perform the duties of the county administrator during any vacancy caused by the temporary absence, or suspension, or removal, resignation or death of the county administrator. The appointment shall be for a period not to exceed sixty days, and it may be renewed, in the case of suspension, removal, resignation, or death for an additional period not to exceed sixty days.

3-12-2. The person appointed acting county administrator shall be ineligible for appointment as county administrator, unless said person shall have held the title deputy county administrator for at least ninety days.

CHAPTER FOUR

COUNTY ADMINISTRATIVE ORGANIZATION

Section 1. *General*

4-1-1. The administrative functions of the county government shall be provided and performed within an organizational framework consisting of the elected officers enumerated in this chapter, and such divisions and departments as are established in this chapter or which may subsequently be established by administrative code.

4-1-2. The elected officers shall be: a sheriff, three registers of deeds, and a treasurer.

4-1-3. Responsibility for the functions administered by the elected officers of the county shall be vested in the elected officers.

4-1-4. Responsibility for all other functions administered within the several divisions and departments shall be vested in the county administrator.

4-1-5. Except as otherwise provided in this chapter, the county administrator, with the approval of the county council, shall designate those divisions to be supervised by a division director and those, if any, to be supervised by the county administrator. If the county administrator is designated to act as director of one or more divisions, he shall serve in such additional capacity without additional compensation.

4-1-6. With the approval of the county administrator, a division director, other than the county administrator, may designate himself as head of one or more departments within his respective division, but if so designated he shall serve in such additional capacity without additional compensation.

4-1-7. Appointed employees or officers of the county who are or may be designated as directors of divisions shall be appointed by the county administrator, subject to the approval of the county council. Such persons shall plan, organize, schedule, coordinate, and budget the activities of the several departments placed by this charter or by administrative code within a particular division.

Section 2. *County Sheriff*

4-2-1. There shall be a sheriff, who shall be elected from the county at large. The term of office shall be six years, from and including the first day of January following the election.

4-2-2. The sheriff shall have and exercise all the powers, duties, and responsibilities now or hereafter conferred by any applicable law.

Section 3. *Registers of Deeds*

4-3-1. There shall be three registers of deeds, who shall be elected for terms of six years, from districts as provided by law.

4-3-2. The registers shall have and exercise all the powers, duties and responsibilities now or hereafter conferred by any applicable law.

Section 4. *County Treasurer*

4-4-1. There shall be a division of finance, the head of which shall be the county treasurer, who shall be elected from the county at-large for a term of six years, unless otherwise provided by General Law.

4-4-2. The treasurer shall have and exercise all the powers, duties and responsibilities now or hereafter conferred by any applicable law.

Section 5. *Division of General Services*

4-5-1. A Division of General Services shall be established, and placed under the control of the county administrator.

4-5-2. The division shall include the following functions, activities, officers, and employees: a surveying department; a department of communications; a department of building maintenance; a department of purchasing; one or more dog officers; and a department of inspectional services.

Section 6. *Department of Purchasing*

4-6-1. A department of purchasing may be established under a department head, who shall have the title, director of purchasing.

4-6-2. The director of purchasing shall:

(a) Make all purchases of equipment, materials and supplies required for any county purpose and contract for the rental and for servicing of equipment for all county departments in accordance with requirements established by the county council.

(b) Prepare or approve the preparation of suitable specifications or standards for all materials, supplies and equipment to be purchased, and inspect or cause to be inspected all deliveries to determine their compliance with such specifications and standards.

(c) Upon written request of the governing board thereof, make purchases for municipalities of the County.

(d) Be responsible for the proper maintenance of all inventories of equipment, materials and supplies, and for such purposes shall supervise the record-keeping and operation of any storing and warehousing facilities of the County.

(e) Have authority to transfer or reassign equipment, materials and supplies between offices, departments and agencies of the County, upon approval of the County Administrator.

(f) Operate and maintain facilities for providing such services as mimeographing, duplicating, printing, mailing or data processing as may be authorized by the County Administrator or the County Council.

Section 7. *Division of Environmental Services*

4-7-1. A division of environmental services may be established, which may include the following departments, functions, and activities: a solid waste department, a planning department, the Clean Lakes Program, and such other departments as the county council shall determine.

Section 8. *Planning Commission*

4-8-1. There shall be a Berkshire County Regional Planning

Commission, as now provided by M.G.L. Chap. 40B, and any applicable special acts relating to said commission.

4-8-2. The Commission shall have the exercise all the powers now provided by law, except as may be provided herein.

4-8-3. The Commission shall appoint a Director of County Planning and other planning staff. Any appointee to the staff shall be professionally qualified for the duties of the office, by reason of education, training, and experience.

4-8-4. Such planning staff as may be appointed under the provisions of 4-8-3 shall be under the policy control of, and shall provide services to, the Berkshire County Regional Planning Commission, but shall be under the general supervision of the county administrator.

Section 9. *Powers and Duties*

4-9-1. The Planning Commission and staff shall have the following powers, duties and responsibilities:

(a) To prepare a comprehensive plan for the county.

(b) To make recommendations relating to planning functions of municipalities.

(c) At the request of the governing body of any city or town or public authority operating within the county, to render planning services to the municipalities or public authority, on such terms as may be agreed upon between the county administrator, the planning director, and the said governing body.

(d) To consider proposed municipal zoning actions, and to render advice thereon, if deemed desirable.

(e) To continually update the official map(s).

(f) To advise cities and towns on the probable environmental impact of proposed development plans and projects.

(g) To formulate and coordinate plans for the construction of new facilities for all county departments.

(h) To make applications for state and federal financial assistance which the county may qualify for.

(i) To coordinate, develop and assist in the development of a comprehensive transportation plan and policy for the county to meet the present and future needs of the county for adequate, safe and efficient transportation facilities and services.

(j) To make a continuing study of the transportation needs of the handicapped, senior citizens and other special groups, in relation to the existing transportation facilities and services within the county.

(k) To concern itself with any and all matters pertaining to the economic development of the county.

(l) To perform such other responsibilities and duties as may be assigned by the Berkshire County Regional Planning Commission and the county administrator.

Section 10. *Division of Human Services*

4-10-1. A division of human services may be established, which may include any activities or services designed to meet the needs of county residents.

CHAPTER FIVE

GENERAL AND TRANSITIONAL PROVISIONS

Section 1. *Effective Date*

5-1-1. This charter shall be partly in effect upon its adoption by the voters in November 1988, to enable the County Apportionment Commission established in this chapter to establish county council districts.

5-1-2. This charter shall take effect on the first day of January approximately twenty-six months following its adoption by the voters.

5-1-3. At the regular election held in 1990, the following members of the county council shall be elected: one member shall be elected at-large for a term of four years; one shall be elected from each of the three voting districts for a term of two years; and one shall be elected from each of the three voting districts for a term of four years.

5-1-4. At the regular election held in 1992, the following additional members of the county council shall be elected: two members shall be elected at-large for a term of four years.

Section 2. *Charter Amendments*

5-2-1. This charter may be revised or amended in accordance with the procedures made available under the Laws of the Commonwealth of Massachusetts, specifically M.G.L. 34A.

5-2-2. This charter may also be amended by the voters at any regular state election, provided that the amendments shall first have

been adopted by a two-thirds vote of the council, and shall have been submitted to the Secretary of State of the Commonwealth, in accordance with clause 2-12-3 of this charter.

Section 3. *Severability*

5-3-1. The provisions of this charter are severable. If any provision of this charter is held invalid, the other provisions shall not be affected thereby. If the application of this charter, or any of its provisions, to any person or circumstance is held invalid, the application of this charter and its provisions to other persons and circumstances shall not be affected thereby.

Section 4. *Specific Provision to Prevail*

5-4-1. To the extent that any specific provision of this charter may conflict with any other provision expressed in general terms herein, the specific provision shall prevail.

Section 5. *Rules and Regulations*

5-5-1. A copy of all rules and regulations adopted by the county council shall be placed on file in the office of the city clerk of each city and the office of the town clerk of each town. A copy shall be made available to any person requesting such information. No rule or regulation adopted by the county council shall become effective until seven days after its adoption.

Section 6. *Continuation of Existing Laws, etc.*

5-6-1. All General Laws relating to counties, special laws, resolutions, orders, and rules and regulations of or pertaining to the county that are in force when this charter takes effect, and not specifically or by implication repealed herein, shall continue in full force and effect until amended or repealed, or rescinded by due course of law, or until they expire by their own limitations.

5-6-2. The provisions of the following statutes are hereby made inapplicable to Berkshire County:

(a) Section 4 of M.G.L. Chap. 34 providing for the election of three county commissioners;

(b) Sections 5 and 5A of M.G.L. Chap. 34, as amended, establishing the salary of county commissioners;

(c) Section 9 of M.G.L. Chap. 34 establishing the date and place of meeting of the county commissioners;

(d) Section 11 of M.G.L. Chap. 35 requiring signatures by a majority of the county commissioners of payments to be made by the treasurer.

5-6-3. The provisions of the following special acts are amended:

(a) Chap. 439 of the Acts and Resolves of 1980, to allow the county council to have and exercise all powers vested in the county commissioners, relating to the Berkshire County Regional Housing Authority;

(b) Section 126.0 of 780 C.M.R., to allow the county council to have and exercise all powers vested in the county commissioners, relating to the Berkshire County Zoning Board of Appeals;

(c) Chap. 53 of the Acts of 1977, to allow the county council to exercise the authority vested by said act in the county commissioners, to expend money for the purpose of promoting the recreational advantages of Berkshire County.

Section 7. *Special Laws Retained*

5-7-1. Nothing in this charter shall be construed so as to alter in any manner the provisions of certain special laws establishing and governing the operation of the police communications system, as it now exists in the Berkshire County Emergency Communications Center.

Section 8. *Continuation of Government*

5-8-1. Until superceded under this charter, the organization of the county agencies and the powers and duties exercised by each such agency shall continue as established prior to the adoption of this charter.

Section 9. *Transfer of Records and Property*

5-9-1. All records, property, and equipment whatsoever of any county agency, or part thereof, the powers and duties of which are assigned in whole or in part to another agency or level of government pursuant to this charter, shall be transferred forthwith to such agency or level of government when such agency shall have been established hereunder.

Section 10. *Continuation of Personnel*

5-10-1. Any person holding a county office or a position in the administrative service of the county, or any person holding full-time employment under the county, shall retain such office, position or employment, and shall continue to perform the duties of such office, position or employment until provision shall have been made for the performance of those duties by another person or agency; provided, however, no person in the permanent, full-time service of the county

shall forfeit his/her pay grade, or time in service of the county. All such persons shall be retained in a capacity as similar to the capacity in which they were serving at the time this charter becomes effective as is practicable.

Section 11. *Effect on Obligations, Taxes, etc.*

5-11-1. All official bonds, obligations, contracts, and other instruments entered into or executed by or to the county before the effective date of this charter, and all taxes, special assessments, fines, penalties, forfeitures, incurred or imposed, due or owing to the county, shall be enforced and collected, and all writs, prosecutions, actions, and causes of action, except as otherwise provided herein, shall continue without abatement and remain unaffected by this charter; and no legal act done by or in favor of the county shall be rendered invalid by reason of the adoption of this charter.

Section 12. *Initial Apportionment of County Council Districts*

5-12-1. A County Apportionment Commission shall establish county council districts based exclusively upon population within 90 days after the Governor in Council shall have certified the results of the November 1988 election.

5-12-2. The districts shall be made of contiguous, compact territory, and as nearly equal in population as practicable. The district lines shall be drawn without regard to partisan political advantage.

Section 13. *County Apportionment Commission*

5-13-1. Unless otherwise required by law, the County Apportionment Commission shall consist of the city clerks of North Adams and Pittsfield and the town clerks of the three towns having the largest population in the county.

5-13-2. The city clerk of the city of Pittsfield shall convene the Commission. Three members of the Commission shall constitute a quorum, and all actions shall be by an affirmative vote of three or more members.

5-13-3. If the Commission fails to act within the 90 day period, or of an extension granted by a court of competent jurisdiction, any registered voter may submit a plan to the Commission for approval. From the plans submitted, the Commission shall choose a plan meeting the requirements of law. The plan chosen by the Commission shall be filed with the Secretary of State within thirty days of the initial

or extended deadline for filing its plan, but in no case later than the fifteenth of February preceding the November 1990 election.

5-13-4. Any registered voter of the County may, within 30 days of the filing of the plan, ask a court of competent jurisdiction to determine if the plan complies with the law and this Charter.

5-13-5. The apportionment plan shall remain effective until a new plan is adopted by the county council after the release of the next federal or state final census figures.

Section 14. *County Commissioners*

5-14-1. The county commissioners in office on the date that this charter becomes fully effective shall serve out their terms as at-large members of the county council.

Section 15. *Initial Salary of County Council Members*

5-15-1. The salary of the first county council elected under this charter shall be \$2,000 per annum.

Section 16. *County Council: Initial Meeting*

5-16-1. The organizational meeting of the council shall be called prior to January 15, 1991. The meeting shall be called by the incumbent county commissioner with the longest continuous tenure of office. Said commissioner shall also preside at such meeting until the chairperson has been elected, in accordance with the provisions of clause 2-8-1.

Section 17. *Definitions*

5-17-1 Unless another meaning is clearly apparent, from the manner in which the word is used, the following words as used in this charter shall have the following meanings:

(a) He/His. The words "he" or "his" or any other use of the masculine noun or pronoun shall include the feminine.

